

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

RENÉ GARCIA, et al.,

Plaintiffs,

v.

CASE NO. 1:22-cv-24156

KERRIE J. STILLMAN, et al.,

Defendants.

JOINT MOTION TO WAIVE MEDIATION

The parties jointly move to waive required mediation in this case and in support thereof show the following:

Relief Requested and Basis for Relief

Plaintiffs' Complaint mainly seeks declaratory and injunctive relief, as well as compensatory damages. More specifically, Plaintiffs raise constitutional challenges to constitutional provisions and an implementing statute: Fla. Const. art. II, §8(f)(1)-(3) and section 112.3122, Florida Statutes. They ask for a declaratory judgment that those constitutional provisions and statute facially violates their First Amendment rights and an injunction against their enforcement.

¹ The damages claim also is based on alleged constitutional violations.

¹ Defendants also take the position, and argue in their motion to dismiss, that Plaintiffs' claim for damages is barred by the Eleventh Amendment because each

Because Plaintiffs seek to strike portions of the Florida Constitution and a statute, mediation can serve no useful purpose. All Defendants are sued in their official capacities. None of them has any authority to agree with Plaintiffs in mediation that the challenged constitutional provisions and statute are unconstitutional or to agree to not apply them to any particular public officers. Impasse is inevitable.

An Order of this Court relieving the Parties from the obligation to meet and mediate will serve the best interest of judicial economy and preclude the unnecessary expenditure of costs by the parties.

MEMORANDUM OF LAW

Southern District of Florida Local Rule 7.1 authorizes motions and describes their requirements.

This Court's Order Setting Trial and Pre-Trial Schedule, Requiring Mediation, and Referring Certain Matters to Magistrate Judge, requires the parties to select a mediator by Feb. 10, 2023, and to complete mediation by May 16, 2023. DE 38, pp1-2. But in this particular case, mediation would be a fruitless endeavor. As discussed above, mediation cannot result in any negotiated relief to Plaintiffs because they seek to strike sections of the Florida Constitution and a statute which

Defendant is sued in his official capacity and the state has not waived its sovereign immunity for constitutional torts.

defendants have no authority to declare unconstitutional or to agree to not apply.

The instant motion has been timely made, is made for good cause, and is not made for purposes of undue delay. It has the consent of Plaintiffs and no prejudice will result to any party from the granting of the relief herein sought.

WHEREFORE, in consideration of the above, the parties jointly move the Court for an Order relieving the parties of the obligation to meet and mediate.

Certificate of Conferral

Pursuant to Local Rule 7.1 (a)(3), Defendants' undersigned counsel hereby certify that they spoke by phone on January 18, 2023, with Scott Hiassen, counsel for Plaintiffs, during the case management conference about this request and Defendants later sent an email with a draft of this motion to all counsel for Plaintiffs who responded on February 3, 2023, that they join in the request.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL

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COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of February 2023 a true and correct copy of this document was filed electronically with the Clerk of Court through the CM/ECF filing system, which provides notice to all counsel of record.

/s/ Karen A. Brodeen

Karen A. Brodeen